

# AREC

ARKANSAS

REAL ESTATE COMMISSION

REGULATION

SECTIONS 8 & 10

QUICK REFERENCE GUIDE



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# NOTICE

THIS IS A QUICK-REFERENCE GUIDE TO SECTIONS 8 AND 10 OF THE ARKANSAS REAL ESTATE COMMISSION REGULATIONS. SECTIONS 8 AND 10 ARE ONLY A SMALL PORTION OF THE ENTIRE ARKANSAS REAL ESTATE LICENSE LAW AND COMMISSION REGULATIONS. HOWEVER, THESE SECTIONS ADDRESS THOSE ISSUES WHICH BROKERS AND AGENTS OFTEN FACE ON A DAILY BASIS. FOR THAT REASON THE COMMISSION ASSEMBLED THIS QUICK REFERENCE GUIDE SO THAT THE INFORMATION CAN BE READILY AVAILABLE WHEN IT IS NEEDED.

# **AREC**

## **ARKANSAS**

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## **SECTION 8.**

### **AGENCY DISCLOSURE.**

#### **8.1 Seller or Lessor Agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a seller or lessor, the licensee shall disclose to a potential buyer or lessee, or to the buyer's or lessee's licensed agent, the licensee's agency relationship with the seller or lessor. Such disclosure shall be made in a timely manner under the particular circumstances so as to avoid to the extent possible eliciting or receiving from the prospective buyer or lessee information which would reasonably be expected to remain confidential and not disclosed to the seller or lessor, such as, for example, information concerning the real estate needs or motivations, negotiating strategies or tactics, or the financial situation of the potential buyer or lessee.

(2) When the disclosure is made to the licensed agent of the buyer or lessee, it is that licensee's duty to convey the disclosure to the buyer or lessee in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.1(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the buyer or lessee signs any document related to the transaction, such as an offer or lease or rental agreement.

#### **8.2 Buyer or Lessee Agents.**

(a) (1) In any real estate transaction in which a licensee is acting solely as agent for a buyer or lessee, the licensee shall disclose to a potential seller or lessor or to the seller's or lessor's licensed agent, the licensee's agency relationship with the buyer or lessee. Such disclosure shall be made at the first contact with the seller, lessor, or the agent of the seller or lessor.

(2) When the disclosure is made to the licensed agent of the seller or lessor, it is that licensee's duty to convey the disclosure to the seller or lessor in a timely manner.

(b) In all cases, disclosure shall be in writing, but may initially be made orally and reduced to writing at a convenient time subject to the requirements of Regulation 8.2(c). Evidence of the disclosure shall be maintained by the licensee.

(c) In all cases, however, such disclosure must be made before the seller or lessor signs any document related to the transaction, such as an offer or lease or rental agreement.

### **8.3 Dual Agency.**

(a) A licensee who represents both the seller and buyer in a real estate sale transaction, or both the lessor and tenant in a real estate lease or rental transaction shall make disclosure in the time and manner required by Regulations 8.1 and 8.2 and all parties to the transaction must have given their written consent to such dual representation prior to or at the time of execution of the agency contract, listing contract, property management contract, lease, rental agreement, offer and acceptance contract or other real estate contract.

(b) Notwithstanding Regulation 8.3(a), a licensee shall not accept a commission, rebate, profit, payment, compensation or other valuable consideration in connection with a real estate transaction or real estate activity from any person or entity except the licensed principal broker under whom the licensee is licensed.

### **8.4 Failure to Disclose Agency Relationship.**

A licensee who fails to disclose the licensee's agency relationship in the time and manner required by these regulations shall be subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].

### **8.5 Fidelity and Honest Dealing.**

(a) In accepting employment as an agent, a licensee pledges to protect and promote the interests of the client or clients. This obligation of absolute fidelity to the interest of the client or clients is primary, but does not relieve a licensee from the equally binding obligation of dealing honestly with all parties to the transaction.

(b) A licensee shall not offer or advertise property without authority and in any offering or advertisement the price quoted must not be other than that agreed upon with the owners as the offering price.

(c) When acting as agent in the sale or management of property, a licensee shall not accept any commission, rebate, profit, payment, compensation or other valuable consideration from any source in connection with the property without full written disclosure to the party represented by the licensee.

(d) A licensee shall not accept compensation from more than one party without full written disclosure to all parties to the transaction.

## **SECTION 10.**

### **BROKER RESPONSIBILITIES; ETHICAL REQUIREMENTS; TRUST FUNDS AND ACCOUNTS; LISTING AND OFFER AND ACCEPTANCE AGREEMENTS; CRIMINAL CONVICTIONS.**

#### **10.1 Dealing Independently of Principal Broker.**

(a) If a principal broker or executive broker learns a salesperson, associate broker or executive broker licensed under such principal broker or executive broker has, without permission of the principal broker or executive broker, engaged in real estate activities independently or through some other broker, it is the duty of the principal broker or executive broker to immediately notify the commission in writing and forward such licensee's license to the commission.

(b) Any salesperson, associate broker or executive broker who engages in real estate activities independently or through some other broker without permission from the principal broker or executive broker shall be presumed to be in violation of A.C.A. § 17-42-311 and subject to appropriate sanctions.

#### **10.2 Expiration Date for Agency Agreements or Contracts.**

A licensee shall put a specific determinable duration or a specific expiration date on all written agency agreements or contracts or any extensions thereof. (Examples: Listing and Buyer Representation Agreements or Contracts)

#### **10.3 Membership in Trade Organization.**

A licensee shall not use terms such as REALTOR, REALTIST or any other trade name or insignia of membership of any real estate organization of which the licensee is not a member.

#### **10.4 Broker Responsibilities; Executive Brokers; Part-Time Brokers.**

(a) (1) A principal broker is generally responsible for all business conducted by the broker's firm and for all of the real estate activities of all of those licensed under or associated with the principal broker, unless the licensee conducted real estate business independently and without permission or authority from the principal broker. If the principal broker learns that a licensee is conducting business independently, that principal broker

must comply with Commission Regulation 10.1(a).

(2) For each executive broker so designated, the principal broker must complete and file with the Commission an appropriate designation form signed by both the principal broker and the designated executive broker. The designation of an executive broker is effective when filed with the Commission.

(3) Designation of one or more executive brokers does not absolve the principal broker of general responsibility for the conduct of all real estate business conducted by the principal broker's firm, and the principal broker is specifically responsible for the activities of all executive brokers.

(b) Principal brokers and executive brokers have the duty and responsibility to instruct those brokers and salespersons licensed under them with regard to the fundamentals of real estate practice and the ethics of the profession, and to keep them informed and abreast of all changes and developments pertaining to the Arkansas Real Estate License Law and Commission regulations. They shall also exercise strict supervision of the real estate activities of all those licensed under them and for whom they have supervisory responsibility.

(c) Whether or not a principal broker or executive broker has discharged these responsibilities for those licensed under him/her will depend on various factors and circumstances, including, without limitation, the following:

- (1) Frequency and manner of contact and communication;
- (2) Type and frequency of educational and instructional activities;
- (3) Method and frequency of monitoring real estate activities.

(d) (1) The preparation of instruments in connection with a real estate rental or sale and the closing of a sale by a licensee must be performed by or under the specific supervision of the principal broker.

(2) If the principal broker or designated executive broker or their assigned licensee, closes a transaction or selects a third party to close the transaction, it is the responsibility of the principal broker or designated executive broker to ensure that the real estate closing conducted on behalf of the principal broker's or designated executive broker's client(s) is conducted in accordance with the agreement of the buyer and seller. If the buyer and/or seller selects a third party to close the transaction the principal broker or designated executive broker, or their assigned licensee, must provide written closing instructions, on behalf of their client(s), to the third party closing the transaction, and review the client's closing statement, if reasonably available, to insure that the closing is conducted in accordance with the agreement of their client. It is strongly recommended that the principal broker, designated executive broker, or assigned licensee advise the client to contact the closing agent or title insurer about the availability of closing protection.

(e) No broker who is gainfully employed, or who is engaged in a non-real estate related field, may employ any licensee to work under the broker's license

issued to such broker. A broker who is employed or who is engaged in any field other than real estate will be presumed to be gainfully employed or engaged in a non-real estate related field. This presumption may be overcome by proof that such employment or engagement is (1) in a real estate related field, and (2) conducted in the same office as the broker's real estate business.

## **10.5 Advertising.**

(a) A licensee may not advertise any property, including the licensee's own property, for sale or rent, or display a real estate sign without including in that advertisement or sign the name of the firm with whom that licensee is licensed.

(b) A principal broker and any persons licensed with said principal broker shall not advertise or otherwise conduct real estate brokerage business under any name other than the name in which the principal broker's license has been issued.

(c) In public advertising a principal broker shall be especially careful to present a true picture and should not permit licensees to use individual names or telephone numbers, unless the licensee's connection with the broker is obvious in the advertisement.

## **10.6 Knowledge of Property.**

A licensee shall exert reasonable efforts to ascertain those facts which are material to the value or desirability of every property for which the licensee accepts the agency, so that in offering the property the licensee will be informed about its condition and thus able to avoid intentional or negligent misrepresentation to the public concerning such property.

## **10.7 Handling of Funds; Maintenance of Records.**

(a) (1) A licensee shall immediately deliver to the principal broker any money or other consideration received in connection with a real estate transaction which belongs to others, such as escrow or trust funds, clients' moneys, earnest moneys, rents, advance fees, deposits, etc.

(2) A broker shall deposit all advance fees in the broker's trust account and shall disburse such funds only in accordance with the terms of a written agreement signed by the owner of the funds. If such written agreement is not received within a reasonable time after payment of the advance fee, the fee shall be refunded to the owner.

(3) "Advance fee" means any fee charged for services to be paid in advance of the rendering of such services, including, without limitation, any fee charged for listing, advertising, or offering for sale or lease any real property.

(b) (1) Each principal broker shall maintain complete records of all real estate business handled by that firm. Separate files for each real estate transaction conducted by the firm shall be maintained and shall contain signed copies of any of the following documents which were prepared in connection with the transaction: (i) listing contract, (ii) agency contract, (iii) offers, (iv) offer and acceptance contracts and (v) closing statements, along with any additional documents as may be necessary to make a complete record of each transaction.

(2) Each principal broker shall maintain complete records pertaining to property managed for others. Such records shall include all contracts, financial transactions, receipts, statements, repair estimates and other documents relating to management of the property.

(3) All records required by Regulation 10.7 shall be maintained by the principal broker for three (3) years or such time as may be required by law, whichever is greater, and shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission. All records required by Regulation 10.7 may be maintained in an electronic form provided that a copy of the records can be produced as required by this Regulation.

(c) When a real estate firm ceases to do business and to maintain an office, the last principal broker remaining with the firm shall be responsible for all records of the firm, including the firm's real estate trust account and transaction records, and at the time the real estate firm's office is closed, the principal broker shall immediately notify the Commission of the address and phone number of the place where those records are being maintained. If for any reason that broker delivers custody or responsibility for those records to another person or firm, he/she shall immediately notify the Commission of such transfer and furnish the name, address and phone number of such person or firm.

## 10.8 Trust Funds; Trust Accounts.

(a) "Trust funds" means and includes money or other things of value not belonging to the principal broker but which are received by the principal broker or any of the principal broker's licensees in connection with a real estate transaction or real estate activity, including, without limitation, clients' moneys, earnest moneys, rents, advance fees, deposits, etc. For purposes of the Arkansas Real Estate License Law and Commission regulations, any funds deposited in a broker's trust account are presumed to be trust funds.

(b) Except as provided in Regulation 10.8(d), a principal broker shall not commingle trust funds with personal funds or other non-trust funds and shall not deposit or maintain trust funds in a personal account or any kind of business account except a specifically designated trust account.

(c) A principal broker who receives trust funds shall either maintain a separate trust account or shall have an escrow agent for all such trust funds. The principal broker of the firm shall be solely responsible and accountable for all trust funds received by the firm and all deposits to or disbursements from the trust account. The principal broker shall also be responsible and accountable for any funds delivered to an escrow agent selected by the principal broker, but shall not be responsible for funds delivered to an escrow agent selected by the parties. Except as authorized by Regulations 10.8(i) and 12.2, the trust account shall be non-interest bearing. The name on the account shall include either "trust" or "escrow" and must be located in an institution insured by either the FDIC or some other insuring agency of the federal government.

(d) A principal broker may maintain the broker's own funds in a designated trust account only when they are clearly identified as the broker's deposit and only for the following purposes:

(1) If the bank in which the account is maintained designates a specific minimum balance that must be maintained in order to keep the account open, the broker may maintain that amount in the account designated as the broker's funds.

(2) If the bank in which the account is maintained requires a service charge to be paid for the account, the broker may maintain a reasonable amount to cover that service charge in the account in the broker's name, provided, however, that such amount shall not exceed the total of six (6) months service charges.

(e) With regard to each separate trust account, the principal broker shall submit to the Commission in writing the following:

- (1) Name and number of the account.
- (2) Name and address of the bank.
- (3) Date the account was opened.

The principal broker shall keep the Commission informed at all times of the foregoing details of each separate trust account.

(f) In addition to the requirements of Regulation 10.8(e), the principal broker shall submit the same information in writing immediately upon any of the following events or occurrences:

- (1) Commission approval of real estate firm name.
- (2) Change of real estate firm name.
- (3) Designation of new principal broker.
- (4) The account is changed in any respect or closed.

(g) (1) No later than three (3) days following the execution of a real estate contract by both seller and buyer, all trust funds delivered to the principal broker, shall be either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. All other funds delivered to the broker pending performance of any act shall be, no later than three (3) days, either deposited in the trust account, delivered to an escrow agent, or deposited pursuant to a written agreement by the seller and buyer. Should the third (3<sup>rd</sup>) day be a Saturday, Sunday, or legal holiday, then the third (3<sup>rd</sup>) day is extended to the next day which is not a Saturday, Sunday, or legal holiday. The broker shall maintain an accounting of all funds delivered to the broker and shall keep a signed receipt for any funds the broker delivers to an escrow agent. The broker remains responsible for the funds if the broker selected the escrow agent, but not if the parties selected the escrow agent. A broker shall at all times keep detailed records of all funds coming into the broker's possession and all disbursements made by the broker.

(2) All trust account bank statements shall be reconciled in writing at least monthly and balanced to the total amount of trust funds deposited in the account which have not been disbursed. Copies of such reconciliations shall be kept by the broker for at least three (3) years or for such time as may be required by law, whichever is greater.

(3) All trust fund records, including bank reconciliations, shall be open to inspection by and made available to the investigative staff of the Commission at the firm's office or other location designated by the Commission.

(h) (1) All security deposits made under a rental or lease agreement shall be deposited in the principal broker's trust account, including those deposits made on property owned by any licensee licensed under the principal broker unless the licensee who owns the property has a written agreement with the tenant providing that the licensee may keep the security deposit in the licensee's separate account. A copy of any such agreement shall be furnished to the principal broker by the licensee.

(2) Provided, however, that a principal broker shall not be responsible for the failure of those licensed under such principal broker to comply with Regulation 10.8(h)(1) as long as the principal broker is in compliance with Regulation 10.4.

(i) Nothing in this Regulation 10.8 shall be deemed to prohibit a broker from maintaining certain funds or deposits in particular transactions in an interest-bearing account when required to do so by law or valid regulation of any governmental agency, nor shall it prohibit a broker from maintaining an interest-bearing account while participating in the Interest on Real Estate Brokers' Trust Account program authorized by Section 24 of Act 690 of 1993 [A.C.A. §17-42-601 et seq.] and Regulations 12.1 and 12.2.

## **10.9 Disbursement of Trust Funds.**

(a) A principal broker shall not disburse trust funds from the broker's designated trust account contrary to the terms of a contract for the sale or rental of real estate, or other contract pursuant to which the funds were received, and a principal broker shall not fail to disburse trust funds according to the terms of such contract.

(b) Except as otherwise authorized by Regulation 10.8(d), the balance of a principal broker's trust account shall at all times equal the total of the trust funds received for which the broker is accountable.

(c) A principal broker who disburses trust funds from a designated trust account under the following circumstances shall be deemed by the commission to have fulfilled properly the broker's duty to account for and remit money which the broker is required to maintain and deposit in a designated trust account:

(1) upon the rejection of an offer to buy, sell, rent, lease, exchange, or option real estate;

(2) upon the withdrawal of an offer not yet accepted to buy, sell, rent, lease, exchange, or option real estate;

(3) at the closing of the transaction;

(4) upon securing a written agreement which is signed by all parties having an interest in the trust funds and is separate from the contract which directs the broker to hold the funds;

(5) upon the filing of an interpleader action in a court of competent jurisdiction;

(6) upon the order of a court of competent jurisdiction; or

(7) upon a reasonable interpretation of the contract which directed the broker to deposit the funds.

(d) When a broker makes a disbursement to which all parties to the contract have not expressly agreed in writing, the broker must immediately notify all parties in writing of the disbursement.

## **10.10 Agreements to be Written.**

(a) Except as provided in Regulation 10.10(b), a licensee, for the protection of the public and of all parties with whom the licensee deals, shall see that the exact agreement of the parties regarding real estate is in writing. A licensee shall also see that clients and other parties to the transaction with whom the licensee deals receive copies of such agreements signed by all parties. (Examples: Exclusive agency agreements or contracts, real estate contracts, closing statements, lease agreements, management agreements, financial obligations and commitments, etc.) It is

strongly recommended that a licensee obtain written acknowledgement from the buyer and or seller that the buyer and or seller have received signed copies. [Amended 1-1-05]

(b) It is strongly recommended that non-exclusive agency agreements or contracts be in writing. [Amended 1-1-05]

(c) In compliance with the Arkansas Supreme Court decision in the case of Pope County Bar Association, Inc. vs. Suggs, 624 S.W. 2d 828 (1981), real estate forms used by licensees in the regular course of business shall be approved by a licensed Arkansas attorney prior to use. The licensee shall be responsible for providing evidence of such approval by a licensed Arkansas attorney upon request of the Commission.

### **10.11 Self Dealing.**

Licensees shall not buy, sell, rent or lease property for themselves or for a corporation, partnership or association in which they have an interest without first making full disclosure to the buyer or seller, as the case may be, of the exact facts that they are licensed as a real estate broker or salesperson and are buying, renting or leasing the property for their own account or have an interest in the property which they are selling, renting or leasing. All such disclosures must be made in writing before the sales, rental or lease contract is entered into.

### **10.12 Offers and Acceptances.**

(a) All offers received on a specific property shall promptly be presented to the seller by the listing firm or other licensee designated by an authorized representative of the listing firm.

(b) Every offer received must be signed by the licensee who receives it and by that licensee's supervising broker. Every acceptance must be signed by the listing licensee and that licensee's supervising broker. (It is desirable for the supervising brokers of the selling licensee and listing licensee to review and sign each real estate contract before it is submitted to the seller, although that is not always possible. However, such supervising brokers shall review and sign the real estate contract as soon as possible after it is received, and, in all cases, prior to closing.)

### **10.13 Listing Agreements; Signs.**

(a) If a firm holds an exclusive listing contract on a parcel of property, the selling licensee shall not contact the seller about showing the property or negotiating the sale without prior permission from the listing firm or other licensee designated by an authorized representative of the listing firm. Any offers received by the selling licensee shall be presented to the firm holding the exclusive listing contract not later than the close of the next business day after receipt of the offer. Likewise, all earnest moneys and deposits shall be forwarded to the listing firm for deposit in the listing firm's trust account. The listing firm or other licensee designated by an authorized representative of the listing firm shall then present the offer to the seller. The selling licensee may accompany the listing licensee with the latter's permission, but shall not contact the seller without prior permission from an authorized representative of the listing firm.

(b) A licensee shall not knowingly enter into an agency agreement or contract when there is reason to believe that there is an existing exclusive agency agreement or contract in force without first communicating with the other principal broker who holds such agreement or contract to confirm its existence. If there is an existing exclusive agency agreement or contract in force, the licensee shall not enter into another agency agreement or contract without first notifying the client in writing to consult with an attorney regarding the risk of being liable for two (2) separate commissions.

(Examples: Exclusive Listing and Exclusive Buyer Representation Agreements or Contracts, Property Management Agreements)

(c) Signs offering or advertising a property may be on the property only during the existence of a listing agreement, unless otherwise authorized by the owner.

### **10.14 Reporting Violations.**

It is the duty of each licensee to report in writing to the commission any information coming to the licensee's knowledge which is or may be (1) a violation of the Arkansas Real Estate License Law; or (2) a violation of the commission regulations.

## **10.16 Criminal Convictions and Disciplinary Actions.**

(a) A licensee who is convicted of or pleads guilty or nolo contendere to any crime other than a traffic violation shall make written report thereof to the commission within thirty (30) days after the conviction or plea. The report shall include the date of the offense and of the conviction or plea, the name and address of the court, the specific crime for which convicted, or to which the plea is entered, the fine, penalty and/or other sanctions imposed, and copies of the charging document and judgment of conviction or other disposition, including probation or suspension of sentence. The report shall also include the licensee's explanation of the circumstances which led to the charge and conviction or plea, along with any other information which the licensee wishes to submit.

(b) A licensee who after the initiation of an investigation, hearing or other administrative action surrenders or who has a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or cancelled or who is subjected to any sanctions, including probation, involving such license, permit, certification or registration shall make written report thereof to the commission within thirty (30) days after such action. The report shall include the date of the action, the name and address of the regulatory agency which has taken the action and copies of documents pertaining thereto. The report shall also include the licensee's explanation of the circumstances which led to the action, along with any additional information the licensee wishes to submit.

(c) An applicant for a real estate license who has been convicted of or pleaded guilty or nolo contendere to any crime other than a traffic violation or who after the initiation of an investigation, hearing or other administrative action has surrendered or has had a professional, vocational or occupational license, permit, certification or registration denied, revoked, suspended or cancelled or who has been subjected to any sanctions, including probation, involving such a license, permit, certification or registration shall furnish the written report referred to in Regulation 10.16 (a) and/or (b) to the commission at the time the application is submitted if such action has already occurred, otherwise such report shall be made immediately after the action occurs.

## **10.17 Violation of Law or Regulation.**

A licensee who violates or fails to comply with any provision of the Arkansas Real Estate License Law or commission regulations is subject to sanctions under Section 17 of Act 690 of 1993 [A.C.A. §17-42-312].